

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

TRIBUNAL NOTICE 2004-5
Discovery; Prehearing Conference.
Issued: June 24, 2004

2004-5 DISCOVERY; PREHEARING CONFERENCE. Discovery, including motions to compel, must be concluded before the prehearing conference, although the Tribunal may extend discovery on motion filed before prehearing conference demonstrating good cause. Discovery documents should not be filed with the Tribunal.

Though the Tribunal explained in *Occidental Development LLC v Van Buren Township*, MTT Dkt. No. 292745, p.5 (3/4/04) that, with the exception of requests for admission, discovery materials may not be filed with the Tribunal, parties continue to file discovery materials. Although all Tribunal members have sought to end discovery at the prehearing conference, some litigants have not completed discovery before the prehearing conference and have questioned the Tribunal's treatment of discovery requests that remain outstanding at the time of a prehearing conference.

The Tribunal encourages the use of informal exchange of evidence. Regarding formal discovery, TTR 270 ends formal discovery at the prehearing conference, unless "otherwise ordered by the tribunal." Thus, by rule, litigants are not allowed to submit new discovery requests or file motions to compel discovery after the prehearing conference except by leave of the Tribunal for good cause shown.

Limited discovery may be permitted if a motion to extend discovery is timely filed before the prehearing conference. As a guideline and depending on the facts of a specific case, a motion filed 14 days or more before the prehearing conference would be considered timely. Facts that Tribunal members will seek in determining good cause for extending discovery include an explanation by the moving party of what discovery has been conducted, what and why new discovery is sought, and an indication that the moving party has contacted other parties, has advised them of the filing of the motion, and has received notice of their opposition or agreement to the motion. If the parties have agreed to an extension of discovery, they may file, for the Tribunal's consideration at the prehearing, a joint motion and stipulated order.

As the Tribunal explained in its *Occidental Development LLC* decision, discovery should be, except in instances of abuse, conducted without Tribunal supervision. Discovery materials are not considered evidence until offered and admitted at trial. Except for Requests for Admission, Tribunal staff will not file discovery material.